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BAKER et al. v. BUTTERWORTH.

Sept. 11, 1916.

[89 S. E. 849.]

1. Pleading (§ 193 (5)*)—Demurrer—Contributory Negligence.—While plaintiff need not negative contributory negligence, yet, the facts stated by the complaint showing it, it is bad on demurrer.

[Ed. Note.—For other cases, see Pleading, Cent. Dig. §§ 433, 441, 442; Dec. Dig. § 193 (5).* 10 Va.-W. Va. Enc. Dig. 400.]

2. Pleading (§ 8 (17)*)—Conclusions.—Averment of the complaint that plaintiff was proceeding "carefully and cautiously," a mere conclusion, cannot avail against the facts stated showing contributory negligence.

[Ed. Note.—For other cases, see Pleading, Dec. Dig. § 8 (17); Negligence, Cent. Dig. § 182.* 11 Va.-W. Va. Enc. Dig. 218.]

3. Innkeepers (§ 10*)—Injury to Guest—Contributory Negligence—Complaint.—The complaint of a hotel guest, who fell down the back stairway while proceeding along the hallway from her room to the toilet, shows disregard of her plain duty to exercise ordinary care for her own safety, constituting contributory negligence, it disclosing that the hallway was in utter darkness, and this though a notice in the room directed use of the hallway to get to the toilet; no request and refusal of light nor any condition absolving plaintiff from making such request being alleged.

[Ed. Note.—For other cases, see Innkeepers, Cent. Dig. §§ 14-16; Dec. Dig. § 10.* 7 Va.-W. Va. Enc. Dig. 655.]

4. Appeal and Error (§ 1175 (5)*)—Disposition of Case on Appeal.—The complaint, demurrer to which was overruled, disclosing contributory negligence, the appellate court will sustain demurrer and dismiss case.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. § 4579; Dec. Dig. § 1175 (5).* 1 Va.-W. Va. Enc. Dig. 628.]

Error to Circuit Court, Norfolk County.

Action by C. G. Butterworth against C. A. Baker and another. Judgment for plaintiff, and defendants bring error. Reversed and dismissed.

Starke, Venable & Starke, R. E. Miller, and J. Edward Cole, all of Norfolk, for plaintiffs in error.

A. B. Carney, of Norfolk, for defendant in error.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.